

9 FAM 41.122 Notes

(TL:VISA-328; 10-25-2001)

9 FAM 41.122 N1 When to Revoke a Visa

(TL:VISA-328; 10-25-2001)

A consular officer must revoke a visa if:

(1) The alien is ineligible under INA 212(a) to receive such a visa), or was issued a visa in contravention of INA 222(g);

(2) The alien is not entitled to the nonimmigrant visa classification under INA 101(a)(15) specified in such visa;

(3) The visa has been physically removed from the passport in which it was issued; or

(4) The alien has been issued an immigrant visa.

9 FAM 41.122 N2 Revocation Authority Not to be Used Arbitrarily

(TL:VISA-328; 10-25-2001)

Although the decision to revoke a visa is a discretionary one, the consular officer should not use this authority arbitrarily. In accordance with 22 CFR 41.122(b), when practicable, the consular officer must:

(1) Notify the alien of the intention to revoke the visa;

(2) Allow the alien the opportunity to show why the visa should not be revoked; and

(3) Request the alien to present the travel document in which the visa was issued.

9 FAM 41.122 N3 Revocation if Alien is in the United States

(TL:VISA-328; 10-25-2001)

Under no circumstances should a consular officer revoke the visa of an alien believed to be physically in the United States, or to have commenced an uninterrupted journey to the United States.

9 FAM 41.122 N4 Revoking Visas in Sensitive Cases

(TL:VISA-328; 10-25-2001)

In cases involving foreign government officials, prominent public figures, and objects, or potential objects, of U.S. and foreign criminal investigations, post should seek Department guidance prior to any visa revocation, unless unusual and exigent circumstances prevent such a consultation. Consular officers should be alert to the political, public relations and law enforcement consequences that can follow a visa revocation, and should work with the Department to ensure that all legally available options are fully and properly addressed. The revocation of the visa of a public official, or prominent local or international person, can have long-term repercussions on political relationships with foreign governments and on our public diplomacy goals in a foreign state.

9 FAM 41.122 N4.1 Revoking Diplomatic and Official Visas

(TL:VISA-328; 10-25-2001)

Consular officers must keep in mind that most A, G, C-2, C-3, and NATO visa categories are exempt from most INA 212(a) ineligibility provisions per 22 CFR 41.21(d). Precipitant action must be avoided in cases involving foreign government officials and other prominent public figures. Consultations at post and with the Department might result in the decision that the Department, rather than the consular officer, should undertake the revocation. The Department's revocation authority provides more flexibility in managing relevant issues. For example, Department revocations may be undertaken prudentially, rather than on the basis of a specific finding of ineligibility, and are not subject to the 22 CFR 41.122 requirement with respect to notification to the alien.

9 FAM 41.122 N4.2 Revoking Visas of Subjects of Criminal Investigations

(TL:VISA-328; 10-25-2001)

In cases where an alien may be the subject of a criminal investigation, action by a consular officer without prior consultation with the Department could:

- (1) Jeopardize an ongoing investigation;*
- (2) Prejudice an intended prosecution;*
- (3) Preclude apprehension of the subject;*
- (4) Put informants at risk; or*

(5) Damage cooperative law enforcement relationships with foreign police agencies.

When a consular officer suspects that the visa revocation may involve U.S. law enforcement interests, the consular officer should consult with the law enforcement agencies at post and inform the Department of the case and the proposed action by the post. This would allow the Department to consult with potentially interested entities before the revocation is made. Posts should err on the side of prudence with determining which cases to submit to the Department.